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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CYNTHIA R. RALL and RICHARD R. RALL
Individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

SONY CORPORATION, SONY OPTIARC
AMERICA INC., SONY OPTIARC INC.,
HITACHI, LTD., TEAC CORPORATION,
TEAC AMERICA, INC., LG ELECTRONICS,
INC., HITACHI-LG DATA STORAGE INC.,
TOSHIBA SAMSUNG STORAGE
TECHNOLOGYCORP., SAMSUNG
ELECTRONICS CO. LTD., TOSHIBA
CORPORATION, KONINKLIJKE PHILIPS
ELECTRONICS N.V., LITE-ON IT
CORPORATION, PHILIPS AND LITE-ON
DIGITAL SOLUTIONS CORPORATION,
PHILIPS AND LITE-ON DIGITAL
SOLUTIONS USA, INC.,

Defendants.

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NORTHERN DISTRICT OF CALIFORNIA
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Case No.

10 1933
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs, indirect purchasers of Optical Disk Drives as defined below, on behalf of
2 themselves and all others similarly situated, for their Complaint against all Defendants named
3 herein, demand trial by jury of all claims properly triable thereby, and complain and allege as
4 follows:

5 **I. INTRODUCTION**

6 1. This case arises out of a long-running conspiracy extending from at least October 1,
7 2005 through the present ("the Class Period"), among Defendants and their co-conspirators, with
8 the purpose and effect of fixing, raising, and maintaining prices for Optical Disk Drives sold
9 indirectly to Plaintiffs and other indirect purchasers throughout the United States.

10 2. The Optical Disk Drives and Optical Disk Drive Products that are the subject of this
11 lawsuit include the following formats: CD-ROMs ("CD"), CD recordable/rewritable ("CD-
12 R/RW"), DVD-ROM ("DVD"), DVD-recordable/rewritable ("DVD-R/RW"), Blu-Ray ("BD"),
13 Blu-Ray recordable/rewritable ("BD-R"/"BD-RE") and HD-DVD. During the Class Period,
14 Optical Disk Drives served as one of the primary means for recording and reading music, movies,
15 and other digital data. During this time, defendants' sales of Optical Disk Drives and Optical Disk
16 Drive Products increased substantially and generated billions of dollars in annual revenues.

17 3. To maintain price stability and increase profitability in the Optical Disk Drive
18 market, Defendants conspired, combined, and contracted to fix, raise, maintain, and stabilize the
19 price at which Optical Disk Drives and Optical Disk Drive Products were sold in the United States.
20 Defendants fraudulently concealed their anticompetitive conduct from Plaintiffs and the Classes in
21 furtherance of the conspiracy.

22 4. Defendants' anticompetitive conduct in the Optical Disk Drive market is the subject
23 of an ongoing grand jury investigation by the United States Department of Justice ("DOJ").
24 Regulators in other countries are investigating Defendants' practices as well.

25 5. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of
26 the Class paid artificially inflated prices for Optical Disk Drives and Optical Disk Drive Products
27 during the Class Period in excess of the prices they would have paid in a competitive market.

28 6. Plaintiffs bring this action seeking federal injunctive relief under Section 16 of the

1 Clayton Act, 15 U.S.C. § 26 for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and to
2 recover damages under sections 349 *et seq.* of New York's General Business Law and the
3 Donnelly Act, common law principles of restitution, disgorgement, unjust enrichment, as well as to
4 recover the costs of suit, including reasonable attorneys fees, for the injuries that Plaintiffs and all
5 others similarly situated sustained as a result of the Defendants' conspiracy to fix, raise, maintain
6 and stabilize the price of Optical Disk Drives.

7 **II. JURISDICTION AND VENUE**

8 7. This action is brought under Section 16 of the Clayton Act (15 U.S.C. §26) to
9 secure equitable relief against Defendants due to their violations of Section 1 of the Sherman
10 Antitrust Act (15 U.S.C. §1), as well as under the antitrust and unfair competition laws of the State
11 of New York to obtain restitution, recover damages, and to secure other relief against Defendants
12 for violations of those laws.

13 8. This Court has subject matter jurisdiction of the federal antitrust claims asserted in
14 this action under Section 16 of the Clayton Antitrust Act (15 U.S.C. §26), Section 1 of the
15 Sherman Act (15 U.S.C. §1), and 28 U.S.C. §§ 1331 and 1337. This Court has subject matter
16 jurisdiction of the state-law claims asserted in this action under 28 U.S.C. §§ 1332(d) and 1367, in
17 that the matter in controversy exceeds the sum of \$5 million exclusive of interest and costs,
18 members of the proposed classes are citizens of states different from Defendants, and certain
19 Defendants are citizens or subjects of foreign states.

20 9. Venue is proper in this District pursuant to 15 U.S.C. §22 and 28 U.S.C. §1391,
21 because one or more Defendants reside, is licensed to do business, or is found or transacts business
22 in this District, and a substantial part of the events or omissions giving rise to the Plaintiffs' claims
23 arose in this District.

24 10. Defendants conduct business throughout the United States, including in this
25 jurisdiction, and they have purposefully availed themselves of the laws of the United States,
26 including the laws of the State of New York. Defendants' products are sold in the flow of
27 interstate commerce, and Defendants' activities had a direct, substantial and reasonably foreseeable
28 effect on such commerce.

11. Defendants' conspiracy to fix the price of Optical Disk Drives substantially affected commerce throughout the United States and in the State of New York because Defendants, directly or through their agents, engaged in activities affecting the State of New York. Defendants have purposefully availed themselves of the laws of State of New York identified herein in connection with their activities relating to the production, marketing, and sale of Optical Disk Drives. Defendants produced, promoted, sold, marketed, and/or distributed Optical Disk Drives, thereby purposefully profiting from access to indirect-purchaser consumers in the State of New York. Defendants also contracted to supply or obtain goods or revenue related to the business for Optical Disk Drives. As a result of the activities described herein, Defendants:

- a. Caused damage to the residents of the State of New York;
- b. Caused damage in the State of New York by acts or omissions committed outside the State of New York by regularly doing or soliciting business in the State of New York;
- c. Engaged in persistent courses of conduct within the State of New York and/or derived substantial revenue from the marketing of Optical Disk Drives or the products in which they are used in the State of New York (and services relating to such marketing); and
- d. Committed acts or omissions that they knew or should have known would cause damage (and did, in fact, cause such damage) in the State of New York while regularly doing or soliciting business in the State of New York, engaging in other persistent courses of conduct in the State of New York, and/or deriving substantial revenue from the marketing of Optical Disk Drives or the products in which they are used in the State of New York.

12. The conspiracy described herein affected adversely every person nationwide and in the State of New York identified in this Complaint who indirectly bought Defendants' Optical Disk Drives. Defendants' conspiracy has resulted in an adverse monetary effect on indirect purchasers in the State of New York identified herein.

13. Prices of Optical Disk Drives in the State of New York can be manipulated by

1 conspirators within New York, outside of it, or both. Without enforcing the antitrust and unfair
2 competition laws of the State of New York, companies that break the law will go unpunished.
3 Defendants knew that commerce in the State of New York identified herein would be adversely
4 affected by implementing their conspiracy.

5 **III. THE PARTIES**

6 **The Plaintiffs**

7 14. During the Class Period, the following named Plaintiffs indirectly purchased
8 Optical Disk Drives from one or more Defendants named herein for end use and not for resale.

9 15. Plaintiff Cynthia R. Rall, a resident of New York, indirectly purchased an Optical
10 Disk Drive when she purchased a personal computer during the Class Period, and was injured as a
11 result of Defendants' illegal conduct.

12 16. Plaintiff Richard R. Rall, a resident of New York, indirectly purchased Optical Disk
13 Drives when he purchased a personal computer, a DVD player, a Blu-Ray player, and a Nintendo
14 Wii gaming console during the Class Period, and was injured as a result of Defendants' illegal
15 conduct.

16 **The Defendants**

17 17. Defendant Sony Corporation is a business entity under the laws of Japan, with a
18 principal place of business at 1-7-1, Konan, Minato-Ku, TKY 108-0075, Japan. During the Class
19 Period, Defendant Sony Corporation manufactured, sold, and/or distributed Optical Disk Drives
20 throughout the United States, directly or through its predecessors, affiliates and/or subsidiaries.

21 18. Defendant Sony OptiArc Inc. is the parent corporation of Sony OptiArc America, Inc.
22 and is organized under the laws of Japan, with its principal place of business at Gate City Osaki West
23 Tower, 5F, 1-11-1, Osaki, Shinagawa-Ku, TKY 141-0032, Japan. During the Class Period,
24 Defendant Sony OptiArc Inc. manufactured, sold, and/or distributed Optical Disk Drives
25 throughout the United States, directly or through its predecessors, affiliates and/or subsidiaries.

26 19. Defendant Sony OptiArc America Inc. is a corporation organized under the laws of
27 Delaware, with its principal place of business at 1730 N. First Street, San Jose, California, 95112.
28 Sony OptiArc America Inc. is formerly known as Sony NEC OptiArc, Inc. and is a wholly owned

1 subsidiary of Sony OptiArc, Inc. During the Class Period, Defendant Sony OptiArc America Inc.
2 manufactured, sold, and/or distributed Optical Disk Drives throughout the United States, directly or
3 through its predecessors, affiliates and/or subsidiaries.

4 20. Defendants Sony Corporation, Sony OptiArc America Inc., and Sony OptiArc, Inc.
5 are referred to collectively herein as "Sony".

6 21. Defendant TEAC Corporation is a business entity organized under the laws of Japan,
7 with its principal place of business at 1-47 Ochiai, Tama-shi, Tokyo, Japan. TEAC Corporation
8 controls TEAC America Inc. During the Class Period, Defendant TEAC Corporation manufactured,
9 sold, and/or distributed Optical Disk Drives throughout the United States, directly or through its
10 predecessors, affiliates and/or subsidiaries.

11 22. Defendant TEAC America, Inc. is a business entity organized under the laws of
12 California, with its principal place of business at 7733 Telegraph Rd., Montebello, California. TEAC
13 America Inc. is a wholly owned subsidiary of Defendant TEAC Corporation. During the Class
14 Period, Defendant TEAC America Inc. manufactured, sold, and/or distributed Optical Disk Drives
15 throughout the United States, directly or through its predecessors, affiliates and/or subsidiaries.

16 23. Defendant Hitachi Ltd. is a business entity organized under the laws of Japan, with its
17 principal place of business at 4-6 Kanda-Surugadai Chiyoda-ku, Tokyo, Japan. Hitachi Ltd. is one of
18 the parent corporations of a jointly-owned subsidiary, Hitachi-LG Storage Inc. During the Class
19 Period, Defendant Hitachi Ltd. manufactured, sold, and/or distributed Optical Disk Drives
20 throughout the United States, directly or through its predecessors, affiliates and/or subsidiaries.

21 24. Defendant LG Electronics Inc. is a business entity organized under the laws of Korea,
22 with its principal place of business at 26/F Twin Tower South 20, Yoido-Dong, Youngdungpo-Gu,
23 Seoul, SEO 150875, Republic of Korea. LG Electronics Inc. is the one of the parent corporations of a
24 jointly-owned subsidiary, Hitachi-LG Storage Inc. During the Class Period, Defendant LG
25 Electronics Inc. manufactured, sold, and/or distributed Optical Disk Drives throughout the United
26 States, directly or through its predecessors, affiliates and/or subsidiaries.

27 25. Defendant Hitachi-LG Data Storage Inc. is a business entity organized under the laws
28 of Japan, with its principal place of business at 4F MSC Center Building, 22-23 Kaigan 3-chome,

1 Tokyo Japan. Hitachi-LG Storage Inc. is joint venture formed in 2001, and is 51% owned by Hitachi
2 Ltd. and 49% owned by LG Electronics Inc. During the Class Period, Defendant Hitachi-LG Data
3 Storage Inc. manufactured, sold, and/or distributed Optical drive products throughout the United
4 States, directly or through its predecessors, affiliates and/or subsidiaries.

5 26. Defendant Toshiba Corporation is a business entity organized under the laws of Japan,
6 with its principal place of business at 1-1, Shibaura 1-chome, Minat-ku, Tokyo, 105-8001, Japan.
7 Toshiba Corp. is one of the parent corporations of a jointly-owned subsidiary, Toshiba Samsung
8 Storage Technology Corp. During the Class Period, Defendant Toshiba Corporation manufactured,
9 sold, and/or distributed Optical Disk Drives throughout the United States, directly or through its
10 predecessors, affiliates and/or subsidiaries.

11 27. Defendant Samsung Electronics Co, Ltd. is a business entity organized under the laws
12 of South Korea, with its principal place of business at Samsung Main Building 250-2 ga, Taepyung-
13 ro Chung-gu, Seoul, Korea. Samsung Electronics Co., Ltd. is one of the parent corporations of a
14 jointly-owned subsidiary, Toshiba Samsung Storage Technology Corp. During the Class Period,
15 Defendant Samsung Electronics Co, Ltd. manufactured, sold, and/or distributed Optical Disk Drives
16 throughout the United States, directly or through its predecessors, affiliates and/or subsidiaries.

17 28. Defendant Toshiba Samsung Storage Technology Corp. is a business entity organized
18 under the laws of Japan, with its principal place of business at Solid Square 580, Horikawacho,
19 Saiwai-ku, Kawasaki, KNG 212-0013 Japan. Toshiba Samsung Storage Technology Corp. is a joint
20 venture established in 2004, and is 51% owned by Toshiba Corporation and 49% owned by Samsung
21 Electronics Co. During the Class Period, Defendant Toshiba Samsung Storage Technology Corp.
22 manufactured, sold, and/or distributed Optical Disk Drives throughout the United States, directly or
23 through its predecessors, affiliates and/or subsidiaries.

24 29. Defendant Koninklijke Philips Electronics N.V. ("Philips") is a business entity
25 organized under the laws of The Netherlands, with its principal place of business at
26 Groenewoudseweg 1, Eindhoven 5621 BA, The Netherlands. Philips controls itself and jointly owns
27 other entities such as Philips & Lite-On Digital Solutions Corporation. During the Class Period,
28 Defendant Philips manufactured, sold, and/or distributed Optical Disk Drives throughout the

1 United States, directly or through its predecessors, affiliates and/or subsidiaries.

2 30. Defendant Lite-On IT Corporation ("Lite-On") is a business entity organized under
3 the laws of Taiwan, with its principal place of business at 12-15F, Jui Kuand Road, Taipei City, TAP,
4 11492, Taiwan. Lite-On controls itself and jointly owns other entities such as Philips & Lite-On
5 Digital Solutions Corporation. During the Class Period, Defendant Lite-On manufactured, sold,
6 and/or distributed Optical Disk Drives throughout the United States, directly or through its
7 predecessors, affiliates and/or subsidiaries.

8 31. Defendant Philips & Lite-On Digital Solutions Corporation is a business entity
9 organized under the laws of Taiwan, with its principal place of business at 16F, 392, Jui Kuang Road,
10 Taipei City, TAP, 11492, Taiwan. Philips & Lite-On Digital Solutions Corporation is a joint venture
11 between Philips and Lite-On established in 2007. During the Class Period, Defendant Philips &
12 Lite-On Digital Solutions Corporation manufactured, sold, and/or distributed Optical Disk Drives
13 throughout the United States, directly or through its predecessors, affiliates and/or subsidiaries.

14 32. Defendant Philips & Lite-On Digital Solutions USA, Inc. is a business entity
15 organized under the laws of Delaware, with its principal place of business at 42000 Christy Street,
16 Fremont, California, 94538. Philips & Lite-On Digital Solutions USA Inc. is a joint venture between
17 Philips and Lite-On established in 2007. During the Class Period, Defendant Philips & Lite-On
18 Digital Solutions USA Inc. manufactured, sold, and/or distributed Optical Disk Drives throughout
19 the United States, directly or through its predecessors, affiliates and/or subsidiaries.

20 **Co-Conspirators**

21 33. Various persons and entities, whose identities are at this time unknown to Plaintiffs,
22 participated as co-conspirators in the violations alleged herein and performed acts and made
23 statements in furtherance thereof. When Plaintiffs learn the identities of such co-conspirators,
24 Plaintiffs will seek leave to amend this Complaint to add such co-conspirators as Defendants.

25 34. The acts charged in this Complaint have been done by Defendants and their co-
26 conspirators, or were authorized, ordered, or done by their respective officers, agents, employees,
27 or representatives while actively engaged in the management of each defendant's business or
28 affairs.

Nature of Commerce.

37. In 2008, Samsung estimated that 313 million Optical Disk Drives were sold for personal computers annually, and that more than 200 million Optical Disk Drives were sold annually for all other applications, including CD and DVD players and recorders, camcorders, game consoles, and automotive audio and video units.

38. Optical disks contain microscopic pits for storing data. These pits are made from a crystalline metal alloy and typically are pressed into the disc in a spiral arrangement, beginning at the disk's center. An Optical Disk Drive will spin an inserted disk, while a lens inside the device guides a semiconductor laser beam to scan the disk's surface, and a photodiode detects the light reflected from the disk's bumps and pits. The photodiode reads the light's reflection as a binary code, a series of ones and zeros that can be translated by a computer to usable data. As the laser strikes the pits, the photodiode detects changes in the intensity of the beams and translates those beams into electrical signals. Disks with a greater number of pits can store more data. Additional layers also can be added to disks to increase storage capacity.

39. The pits are approximately 0.8 micrometers on CDs, 0.4 micrometers on DVDs, and 0.15 micrometers on Blu-Ray disks. Optical Disk Drives must have lasers of different wavelengths to read the various disk formats. For example, Blu-Ray disk players use a shorter wavelength laser, blue-violet, to read disks.

40. Optical Disk Drives also can be equipped with technology to write and/or re-write information on certain types of disks. Optical Disc Drives that can write or re-write data are

1 commonly referred to as “burners” or “writers.” Different types of Optical Disc Drives contain
2 various speeds for accessing and writing data.

3 41. When a recordable disk such as a CD-R, DVD-R or Blu-Ray-R is inserted into an
4 appropriate Optical Disc Drive, the unit’s laser is used to selectively heat parts of the organic
5 photosensitive dye layer. The reflective properties of the disk’s surface change as the disk is
6 exposed to the laser beam, causing the photodiode to recognize these surface changes as bumps
7 and pits and to read the new information on the disk.

8 42. Sony and Philips jointed invented audio CDs and the initial Optical Disk Drives that
9 read them. In 1972, Philips announced that it had invented a technique for storing audio
10 recordings on small diameter optical disks. Concurrently, Sony was developing techniques for
11 storing audio recordings on larger diameter optical disks while focusing on error correction
12 techniques. In 1978, Sony and Philips agreed on a single disk format and error correction method.
13 They introduced CDs and CD players to the public in 1982. Since the 1980s, several companies
14 adopted the standards established by Sony and Philips to create other Optical Disk Drive
15 technologies.

16 43. After Sony and Philips established standards for creating CDs and Optical Disk
17 Drives to read them, CD-ROM drives began to penetrate the computer market. Optical Disk
18 Drives have been commonly used in computers since the 1990s, when CD-ROM drives became
19 affordable for the average consumer. Manufacturers subsequently developed Optical Disk Drive
20 technologies including DVD and Blu-Ray that can read, write and store greater amounts of data
21 than CD-ROMs.

22 44. Today, Optical Disk Drives are standard components of almost every computer used
23 in the United States. Due to the increasing popularity of personal and laptop computers,
24 Defendants manufacture, distribute and sell hundreds of millions of Optical Disk Drives each year,
25 generating billions of dollars in annual revenues. Worldwide Optical Disk Drive shipments
26 reached over 300 million in 2007, and generated over \$45 billion in sales revenue between 2004
27 and 2008.

1 **Opportunity for Collusion.**

2 45. At all times prior to and during the Class Period, the Optical Disk Drive industry
3 exhibited certain characteristics that facilitate a conspiracy among industry participants, including
4 market concentration, ease of information sharing, interrelated business relationships, significant
5 barriers to entry, and standardization of Optical Disk Drive Products.

6 **Market Concentration and Joint Ventures.**

7 46. According to published reports, during the Class Period, the Optical Disk Drive
8 industry has been dominated by Defendants and their co-conspirators. During the Class Period,
9 Defendant Philips & Lite-On Digital Solutions Corporation had a 30% market share. The joint
10 venture between Defendants Hitachi and LG Electronics, Defendant Hitachi-LG Data Storage Inc.,
11 had a 27% market share. The joint venture between Defendants Toshiba and Samsung, Defendant
12 Toshiba Samsung Storage Technology Corp., had a 20% market share. And, Defendant Sony
13 Optiarc America, Inc. had a 17% market share. Together these Defendants control over 90% of the
14 global market for Optical Disk Drives.

15 47. In October 2000, Defendants Hitachi and LG Electronics joined together to form
16 Defendant Hitachi-LG Data Storage Inc., a joint venture company for the development, design, and
17 marketing of Optical Disk Drives.

18 48. In April 2003, Defendants Samsung Electronics and Toshiba Corporation signed a
19 memorandum of understanding. In January 2004, these Defendants concluded an agreement to
20 integrate their Optical Disk Drive businesses into a single entity. In April 2004, Defendant Toshiba
21 Samsung Storage Technology Corp. was launched to develop, market, and design Optical Disk
22 Drives.

23 49. In April 2006, Defendant Sony Corporation and NEC Corporation joined forces to
24 create Sony NEC Optiarc Inc. At the formation of the joint venture, Sony had a 55% stake. In
25 September 2008, Sony purchased NEC Corp.'s interest in the joint venture, and renamed it Sony
26 Optiarc Inc., a Defendant herein.

27 50. In 2006, Defendant Lite-On IT Corporation acquired BenQ's Optical Disk Drive
28 business to become the second-largest Optical Disk Drive manufacturer in the world. The business

1 was renamed Philips & Lite-On Digital Solutions Corporation, a Defendant herein.

2 51. The joint ventures of each of these Defendants allowed them to share and have
3 access to each of their parent companies' patents and technologies without the need to pay
4 royalties. The formation of these joint ventures was the product of the exchange of information,
5 and facilitates an ongoing antitrust conspiracy between Defendants.

6 52. The mutually beneficial nature of the business relationships between certain
7 Defendants not only afforded them the opportunity to conspire, but also created a financial
8 incentive for them to do so. According to a spokesman for Defendant Sony Corporation,
9 Defendant Sony NEC Optiarc, Inc. came into existence because, "There was a feeling that those
10 two complementary strengths [Sony Corporation and NEC Corporation] would make more sense
11 in a joint venture than competing against each other."

12 **Barriers to Entry.**

13 53. There are significant manufacturing and technological barriers to entry into the
14 Optical Disk Drive industry. Companies must spend hundreds of millions of dollars in research
15 and development, licensing, and manufacturing of products to compete in the Optical Disk Drive
16 industry. Defendants' ownership and control over Optical Disk Drive technology and market share
17 has enabled Defendants to dictate the terms and costs by which other companies can enter the
18 market. These barriers to entry have created significant difficulty for smaller manufacturers of
19 Optical Disk Drives to compete with Defendants and overcome the effects of economies of scale.
20 As a result, the financial structure of the Optical Disk Drive industry has allowed Defendants to
21 implement their conspiracy to restrict competition and fix, maintain, and stabilize prices for
22 Optical Disk Drives at supra-competitive levels without losing market share.

23 54. Price-fixing and market allocation are easier to attain within a highly concentrated,
24 fungible market for which adequate substitutes do not exist. All of these factors facilitate the
25 implementation and maintenance of an antitrust conspiracy such as that perpetrated by Defendants
26 and alleged herein. The facts do not support a finding of conscious parallelism. Instead, it is
27 evident from the facts that Defendants communicated and conspired to the detriment of Optical
28 Disk Drive consumers.

1 **Trade Associations and Business Organizations.**

2 55. During the Class Period, Defendants belonged to trade and business organizations
3 that focused on Optical Disk Drives and related industries. These organizations include the DVD
4 Forum, the Optical Storage Technology Association ("OSTA"), and the International Symposium
5 of Optical Memory ("ISOM").

6 56. The DVD Forum is a global group of hardware manufacturers, software firms, and
7 content providers. It was established in 1997. The DVD Forum is responsible for the licensing
8 and distribution of DVD products. The DVD Forum states that its "purpose is to exchange and
9 disseminate ideas and information about the DVD Format and its technical capabilities,
10 improvements and innovations." Defendants Hitachi, LG Electronics, Lite-On, Philips, Samsung,
11 Sony, and Toshiba are members of the DVD Forum.

12 57. Defendants Hitachi, LG Electronics, Samsung, Sony, and Toshiba are also members
13 of the DVD Forum's Steering Committee. The Steering Committee's last meeting took place on
14 September 10, 2009 at the Universal Hilton Hotel in Los Angeles, California. During that meeting,
15 Defendants and their co-conspirators communicated with each other about the price-fixing
16 conspiracy and agreed to continue to fix, maintain, and stabilize prices for Optical Disk Drives.

17 58. Defendants LG Electronics and Sony Corporation are members of OSTA.
18 According to OSTA's website, the organization was "incorporated as an international trade
19 association in 1992 to promote the use of writable optical technologies and products for storage of
20 computer data. The organization's membership includes optical product manufacturers and
21 resellers from three continents, representing more than 85 percent of worldwide writable optical
22 product shipments. They work to shape the future of the industry through regular meetings of
23 CD/DVD, file interchange, market development, magneto-optical and planning committees."

24 59. The most recent meeting of the OSTA took place on March 16-18, 2009 at the
25 Pacific Business Centers in Cupertino, California. Representatives, agents or employees of all
26 Defendants were present at that meeting. During that meeting, Defendants were able to and did
27 meet and communicate with each other regarding the price-fixing conspiracy. This meeting of the
28 OSTA enabled Defendants to exchange sensitive pricing information and ensured that Defendants

1 charged the same or similar prices for Optical Disk Drives.

2 60. The Blu-Ray Disc Association is a worldwide group established in 2005 to promote
3 the Blu-Ray format and associated products, to establish standardized formats, and to cross-license
4 technology. Defendants Hitachi, LG Electronics, Philips, Samsung, Sony, and Toshiba are
5 members of the Blu-Ray Disc Association.

6 61. Defendants Sony, LG Electronics, Samsung, and Hitachi participated in the first
7 meeting of Blu-Ray patent owners in Los Angeles, California on July 6-7, 2006. The stated
8 purpose of this meeting was to establish joint licensing agreements for Optical Disk Drive
9 technologies between the participants.

10 62. The International Consumer Electronics Show is the world's largest consumer
11 electronics show. The 2010 International Consumer Electronics Show was held on January 7-10,
12 2010 at the Venetian Hotel in Las Vegas, Nevada. During that event, Defendants and their co-
13 conspirators communicated with each other about the price-fixing conspiracy.

14 63. Defendants and their representatives, agents, and employees attended multiple
15 meetings and conferences organized by these and other industry groups both before and during the
16 Class Period, affording Defendants the opportunity to meet, discuss, and agree upon their pricing
17 of Optical Disk Drives.

18 64. Defendants' use of industry associations to further their conspiracy with respect to
19 the Optical Disk Drive market is consistent with their prior conduct with respect to price-fixing
20 conspiracies for other markets. In particular, Defendants and their affiliates and co-conspirators
21 participated in trade associations and attended industry meetings to further their conspiracies to fix,
22 maintain and stabilize prices for dynamic random access memory ("DRAM"), static random access
23 memory ("SRAM"), flash memory, thin film transistor liquid crystal display ("TFT-LCDs"), and
24 cathode-ray tubes ("CRTs").

25 **Standardization of Optical Disk Drives.**

26 65. Since its inception in the 1970s, the Optical Disk Drive industry has been typified
27 by standardization of disks (e.g., CD-ROMs, DVD-ROMs) and Optical Disk Drive Products driven
28 by industry participants and a variety of industry-related organizations such as ECMA

1 International, the International Standardization Organization ("ISO"), and the International
2 Electrotechnical Commission ("IEC"). These organization and their members are dedicated to
3 "standardizing the use of information communication technology and consumer electronics."

4 66. The Optical Disk Drive industry is also subject to patents and intellectual property
5 rights which require adoption of standardized products specifications.

6 67. The standardization of Optical Disk Drives and Optical Disk Drive Products has
7 enabled Defendants to implement, enforce, and oversee their anticompetitive conspiracy to fix the
8 price of Optical Disk Drives and Optical Disk Drive Products. As a result of this standardization,
9 Optical Disk Drives and Optical Disk Drive Products have become commodity products.
10 Consumers make purchasing decisions for these products based largely, if not exclusively, on
11 price.

12 **Collusion on Prices for Optical Disk Drives.**

13 68. Faced with shrinking profits, Defendants conspired to fix, raise, maintain, and
14 stabilize the price of Optical Disk Drives and Optical Disc Drive Products in the United States at
15 artificially inflated and anticompetitive levels to preserve and increase their revenues.

16 69. Defendants have been the subject of government investigations for their cartel
17 activity in recent years. For example, Defendant Samsung admitted guilt and paid a \$300 million
18 fine following an investigation by the U.S. Department of Justice ("DOJ") into price-fixing of
19 DRAM computer chips.

20 70. The DOJ is currently investigating Defendants Samsung, LG Electronics, Toshiba,
21 and Hitachi, among others, concerning collusion among manufacturers of TFT-LCDs. The
22 ongoing TFT-LCD criminal investigation has resulted in hundreds of millions of dollars in
23 criminal penalties. LG Electronics and Hitachi have both pled guilty to price fixing in the TFT-
24 LCD market and have been fined \$400 million and \$31 million, respectively.

25 71. The European Union ("EU") has also investigated these same companies for
26 anticompetitive practices in the TFT-LCD market. In addition, in November 2007, the EU fined
27 Defendant Sony and various related entities and the Hitachi Maxell Limited joint venture \$110
28 million for fixing the prices of professional videotapes sold in Europe between 1999 and 2002.

1 The European Commission also fined Hitachi and Toshiba for their roles in a conspiracy to control
2 prices and allocate market shares in the market for gas-insulated switchgear between 1988 and
3 2004.

4 72. On October 7, 2009, the Japan Fair Trade Commission issued a cease-and-desist
5 order and levied \$37.4 million in fines against five companies, including Korean affiliates of
6 Defendants Samsung, LG Electronics, and Philips for their alleged participation in a price-fixing
7 cartel for CRTs.

8 73. The pattern of illegal conduct by Defendants Hitachi, LG Electronics, Samsung,
9 Philips, and Sony in a wide variety of product markets is illustrative of Defendants' respective
10 corporate cultures. Those cultures encourage collusion with competitors to create additional profits
11 for their companies at the expense of consumers.

12 74. The DOJ has commenced a grand jury investigation into anticompetitive conduct in
13 the Optical Disk Drive industry, involving several Defendants named herein. The grand jury
14 investigation implies that DOJ attorneys have concluded that sufficient evidence exists to believe a
15 criminal violation of the antitrust laws has occurred. On October 26, 2009, Defendants Sony
16 Optiarc America, Inc., TSST and Hitachi-LG Data Storage, Inc. confirmed that they received
17 subpoenas from the DOJ in connection with a criminal antitrust investigation into price-fixing, bid-
18 rigging, and allocation of markets for Optical Disk Drives. According to various news reports, the
19 EU and Singaporean antitrust authorities are undertaking similar investigations.

20 75. On October 27, 2009, a spokesperson for the DOJ confirmed that, "[t]he Antitrust
21 Division is investigating the possibility of anticompetitive practices in the Optical Disc Drive
22 industry."

23 76. In a Form 6-K filed with the United States Securities and Exchange Commission on
24 November 16, 2009, Defendant Hitachi disclosed the following:

25 In June 2009, a subsidiary in Japan received a grand jury
26 subpoena in connection with an investigation conducted by the
27 Antitrust Division of the U.S. Department of Justice and received
28 requests for information from the European Commission, both in
respect of alleged antitrust violations relating to optical disk drives.
Also in June 2009, the Competition Commission of Singapore began
an investigation of a subsidiary in Korea, also in respect of alleged
antitrust violations relating to optical disk drives. Relevant

1 authorities in the markets in which Hitachi operates continue to
 2 investigate Hitachi and may initiate similar investigations in the
 3 future. These investigations may result in significant penalties in
 4 multiple jurisdictions, and private parties may bring civil actions
 5 against Hitachi seeking compensation for damages resulting from the
 6 relevant violations. Such substantial legal liability or regulatory
 7 action could have a material adverse effect on Hitachi's business,
 8 results of operations, financial condition, cash flows, reputation and
 9 credibility.

10 77. Defendant Philips' annual report for 2009 revealed that it and PLDS also are the
 11 subject of the same criminal investigations. The report stated:

12 On October 27, 2009, the Antitrust Division of the United
 13 States Department of Justice confirmed that it had initiated an
 14 investigation into possible anticompetitive practices in the Optical
 15 Disc Drive (ODD) industry. Philips Lite-On Digital Solutions Corp.
 16 (PLDS), a joint venture owned by the Company and Lite-On IT
 17 Corporation, as an ODD market participant, is included in this
 18 investigation. PLDS is also subject to similar investigations outside
 19 the US relating to the ODD market. PLDS and Philips intend to
 20 cooperate with the authorities in these investigations. [. . .] These
 21 matters are in their initial stages and due to the considerable
 22 uncertainty associated with these matters, on the basis of current
 23 knowledge, the Company has concluded that potential losses cannot
 24 be reliably estimated with respect to these matters. An adverse final
 25 resolution of these investigations and litigation could have a
 26 materially adverse effect on the Company's consolidated financial
 27 position, results of operations and cash flows.

28 78. On October 28, 2009, it was announced that Defendants Sony and Philips were fined
 by the Taiwan Fair Trade Commission for their anticompetitive business practices in connection
 with their abuse of monopoly power in the licensing of CD-R technology.

Effects of Defendants' Antitrust Violations.

79. The ongoing contract, combination, or conspiracy described above has had and
 continues to have at least the following effects:

- a. Price competition in the sale of Optical Disk Drives by Defendants and their
 co-conspirators has been restrained, suppressed, and eliminated throughout
 the United States;
- b. Prices for Optical Disk Drives sold by Defendants have been raised, fixed,
 maintained, and stabilized at artificially high and noncompetitive levels
 throughout the United States; and

c. Indirect purchasers of Optical Disk Drives from Defendants have been deprived of the benefit of free and open competition in the purchase of Optical Disk Drives and Optical Disk Drive Products.

80. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiffs and other members of the proposed classes have been injured in their businesses and property in that they paid more for Optical Disk Drives and Optical Disk Drive Products than they otherwise would have paid in the absence of the unlawful conduct of Defendants.

V. **THE PASS-THROUGH OF THE OVERCHARGES TO CONSUMERS**

81. Defendants' conspiracy to raise, fix, or maintain the price of Optical Disk Drives at artificial levels resulted in harm to Plaintiffs and the proposed classes because it resulted in them paying higher prices for Optical Disk Drive Products than they would have in the absence of Defendants' conspiracy. The entire overcharge for Optical Disk Drives at issue was passed on to Plaintiffs and members of proposed classes.

82. Optical Disk Drives are commodity products, with functionally equivalent products available from Defendants, which manufacture Optical Disk Drives pursuant to standard specifications.

83. The Optical Disk Drive market is dominated by a handful of leading manufacturers, namely, Defendants in this case.

84. An Optical Disk Drive is purchased by a consumer as a stand-alone device or as a substantial part of an Optical Disk Drive Product. When an Optical Disk Drive is purchased by consumers as a stand-alone device, the device itself is directly traceable to the specific manufacturing Defendant. When an Optical Disk Drive is purchased by a consumer as part of an Optical Disk Drive Product, it is a distinct, physically-discrete hardware element of the end-use product and is identifiable by a specific, discrete part or model number that permits tracing. Optical Disk Drives are identifiable and traceable throughout the chain of the distribution to the end user. They do not undergo any alterations as they move through the chain of distribution.

85. The indirect-purchaser buys an Optical Disk Drive through one of two distribution chains, either from the direct purchaser OEM, or through a reseller such as a retailer. Thus, an

1 Optical Disk Drive follows a traceable physical chain from Defendants to the OEMs, to the
2 purchasers of Optical Disk Drive Products. Tracing can help show that changes in the prices paid
3 by direct purchasers of Optical Disk Drives affect prices paid by indirect-purchasers of the Optical
4 Disk Drives themselves, or Optical Disk Drive Products.

5 86. The OEM and the retail markets of Optical Disk Drives and Optical Disk Drive
6 Products are subject to vigorous price competition. The direct purchaser OEMs and retailers have
7 very thin net margins. They are therefore at the mercy of their component costs, such that
8 increases in the price of Optical Disk Drives and Optical Disk Drive Products lead to quick,
9 corresponding price increases at the OEM and retail levels for stand-alone Optical Disk Drives and
10 Optical Disk Drive Products.

11 87. As a result, the inflated prices of Optical Disk Drives resulting from Defendants'
12 price-fixing conspiracy have been passed on to Plaintiffs and the other members of the proposed
13 classes by direct-purchaser manufacturers, distributors, and retailers.

14 88. Optical Disk Drives makes up a substantial component of the cost of Optical Disk
15 Drive Products. The retail price of an Optical Disk Drive Product is determined in substantial part
16 by the cost of the Optical Disk Drive it contains.

17 89. In retailing, it is common to use a "markup rule." The retail price is set as the
18 wholesale cost plus a percentage markup designed to recover non-product costs and to provide a
19 profit. This system guarantees that increases in costs to the retailer will be passed on to end
20 buyers.

21 90. Unlawful overcharges for a fixed-price component result in higher prices for
22 products containing that price-fixed component.

23 91. The economic and legal literature has recognized that unlawful overcharges in a
24 component normally result in higher prices for products containing that price-fixed component. As
25 Professor Herbert Hovenkamp, a noted antitrust scholar, has stated in his treatise, FEDERAL
26 ANTITRUST POLICY, THE LAW OF COMPETITION AND ITS PRACTICE (1994) at 624:

27 A monopoly overcharge at the top of a distribution chain generally results in higher
28 prices at every level below. For example if production of aluminum is monopolized
or cartelized, fabricators of aluminum cookware will pay higher prices for
aluminum. In most cases they will absorb part of these increased costs themselves

1 and pass part along to cookware wholesalers. The wholesalers will charge higher
 2 prices to the retail stores, and the stores will do it once again to retail consumers.
 3 Every person at every stage in the chain likely will be poorer as a result of the
 4 monopoly price at the top.

5 Theoretically, one can calculate the percentage of any overcharge that a firm at one
 6 distributional level will pass on to those at the next level.

7 92. Similarly, two other antitrust scholars – Professors Robert G. Harris (Professor
 8 Emeritus and former Chair of the Business and Public Policy Group at the Haas School of
 9 Business at the University of California at Berkeley) and the late Lawrence A. Sullivan (Professor
 10 of Law Emeritus at Southwestern Law School and author of the Handbook of the Law of Antitrust)
 11 – have observed that “in a multiple-level chain of distribution, passing on monopoly overcharges is
 12 not the exception: it is the rule.”

13 93. As Professor Jeffrey K. McKie-Mason (Arthur W. Burks Professor for Information
 14 and Computer Science and Professor of Economics and Public Policy at the University of
 15 Michigan), an expert who presented evidence in a number of the indirect purchaser cases involving
 16 Microsoft Corporation, said (in a passage quoted in the judicial decision in that case granting class
 17 certification):

18 As is well known in economic theory and practice, at least some of the overcharge
 19 will be passed on by distributors to end consumers. When the distribution markets
 20 are highly competitive, as they are here, all or nearly the entire overcharge will be
 21 passed on through to ultimate consumers... Both of Microsoft’s experts also agree
 22 upon the economic phenomenon of cost pass through, and how it works in
 23 competitive markets. This general phenomenon of cost pass through is well
 24 established in antitrust laws and economics as well.

25 94. Economic and legal literature recognizes that the more pricing decisions are based
 26 on cost, the easier it is to determine the pass-through rate. The directness of affected costs refers to
 27 whether an overcharge affects a direct (*i.e.* variable) cost or an indirect (*i.e.*, overhead) cost.

28 Overcharges will be passed-through sooner and at a higher rate if the overcharge affects direct
 costs. Here Optical Disk Drives are a direct (and substantial) cost of Optical Disk Drive Products.

95. Other factors that lead to the pass-through of overcharges include: (i) whether price
 changes are frequent; (ii) the duration of the anti-competitive overcharge; (iii) whether pricing
 decisions are based on cost; (iv) whether the overcharge affects variable, as opposed to overhead,
 costs; (v) whether the resellers’ production technology is uniform; (vi) whether the reseller supply

curve exhibits a high degree of elasticity; and (vii) whether the demand of the resellers is inelastic. All of these factors were present in the Optical Disk Drive market during the Class Period. The precise amount of such an impact on the prices of Optical Disk Drives and Optical Disk Drive Products can be measured and quantified. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supracompetitive charge passed-through the chain of distribution.

96. Plaintiffs and other indirect purchasers have been forced to pay supracompetitive prices Optical Disk Drives and Optical Disk Drive Products. These inflated prices have been passed on to them by direct purchaser manufacturers, distributors, and retailers. Those overcharges have unjustly enriched Defendants.

VI. CLASS ACTION ALLEGATIONS

97. Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all members of the following Class (the "Nationwide Class"):

All natural-person citizens and entities residing in the United States that, from October 1, 2005 through the present, purchased in the United States, Optical Disk Drives indirectly from the Defendants for their own use and not for resale. Specifically excluded from this Class are the Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

98. Plaintiffs also bring this action on their own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and/or respective New York statute, on behalf of all members of the following Class (the "New York Indirect Purchaser Class"):

All persons and entities in New York who indirectly purchased in New York Optical Disk Drives manufactured and/or sold by one or more of the Defendants during the Class Period. Specifically excluded from this Class are the Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

1 99. Plaintiffs do not know the exact size of the Classes at the present time. However,
2 Plaintiffs believe that due to the nature of the trade and commerce involved, there are at least
3 thousands in the separate New York state class, and hundreds of thousands of class members
4 geographically dispersed throughout the United States, such that joinder of all class members
5 would be impracticable.

6 100. Plaintiffs' claims are typical of the claims of their respective Classes, and Plaintiffs
7 will fairly and adequately protect the interests of the Classes. Plaintiffs' interests are coincident
8 with, and not antagonistic to, those of the members of the Classes. Plaintiffs have retained
9 competent counsel experienced in class action and complex antitrust and consumer protection
10 litigation.

11 101. Common questions of law and fact exist, including:

- 12 i. Whether Defendants and their Co-Conspirators engaged in a
13 contract, combination or conspiracy among themselves to fix, raise,
14 maintain or stabilize the process of, or allocate the market of Optical
15 Disk Drives sold in the United States;
- 16 ii. The duration and extent of the contract, combination or conspiracy;
- 17 iii. Whether the Defendants and their Co-Conspirators were participants
18 in the contracts, combinations or conspiracies alleged herein;
- 19 iv. Whether Defendants and their Co-Conspirators engaged in conduct
20 that violated Section 1 of the Sherman act;
- 21 v. Whether Defendants and their Co-Conspirators engaged in conduct
22 that violated sections 349 *et seq.* of New York's General Business
23 Law;
- 24 vi. Whether the Defendants and their Co-Conspirators engaged in
25 conduct in violation of the antitrust laws of New York as alleged
26 below;

- vii. Whether the anticompetitive conduct of the Defendants and their Co-Conspirators caused prices of Optical Disk Drives to be artificially inflated to non-competitive levels;
- viii. Whether the Defendants and their Co-Conspirators unjustly enriched themselves as a result of their inequitable conduct at the expense of the members of the Classes;
- ix. Whether Defendants and their Co-Conspirators fraudulently concealed the existence of their unlawful conduct;
- x. Whether Plaintiffs and the Classes are entitled to injunctive relief; and
- xi. Whether Plaintiffs and other members of the New York Indirect Purchaser Class were injured by the conduct of Defendants and, if so, the appropriate measure of damages.

102. These and other questions of law and fact are common to the Classes and predominate over any questions affecting only individual class members, including legal and factual issues relating to liability, damages, and restitution.

103. Class action treatment is a superior method for the fair and efficient adjudication of this controversy because:

- a. It will avoid a multiplicity of suits and consequent burden on the courts and Defendants;
- b. It would be virtually impossible for all members of the Classes to intervene as parties-plaintiff in this action;
- c. It will allow numerous individuals with claims too small to adjudicate on an individual basis because of the prohibitive cost of this litigation, to obtain redress for their economic injuries;
- d. It is appropriate for treatment on a fluid recovery basis, which obviate any manageability problems; and

e. It will provide court oversight of the claims process, once Defendants' liability is adjudicated.

104. The named Plaintiffs will fairly and adequately protect the interests of the Nationwide Class and the New York Indirect Purchaser Class in that the named Plaintiffs have no interests antagonistic to the interests of the other members of the Classes and have retained counsel competent and experienced in the prosecution of class actions and antitrust cases to represent themselves and the Classes.

105. This case is also appropriate for certification as a class action because Defendants have acted and refused to act on grounds generally applicable to the Nationwide Class, so that final injunctive relief will be appropriate with respect to the Nationwide Class as a whole.

106. The claims asserted herein are also appropriate for class certification under the laws of the State of New York.

VII. ACTIVE CONCEALMENT

107. Throughout and beyond the conspiracy, Defendants and their co-conspirators affirmatively and actively concealed their unlawful conduct from Plaintiffs. Defendants and their co-conspirators conducted their conspiracy in secret and kept it mostly within the confines of their higher-level executives. Defendants and their co-conspirators publicly provided pre-textual and false justifications regarding their prices, including repeatedly and falsely attributing price increases to increased demand, increased costs, product shortages, and lack of manufacturing capacity, which justifications were made to the general public in press releases, comments to the press, annual reports, and other public filings.

108. Defendants and their co-conspirators concealed the true nature of their unlawful conduct and acts in furtherance thereof, and actively concealed their activities through various other means and methods to avoid detection. Plaintiff did not discover, and could not have discovered through the exercise of reasonable diligence, that Defendants and their co-conspirators were violating the antitrust laws as alleged herein until October 26, 2009.

109. Defendants also took affirmative acts to conceal the conspiracy including issuing public statements falsely stating the Optical Disk Drives were competitively priced. For instance,

1 on June 4, 2007, Defendant Sony issued a press release falsely stating that its Blu-Ray disk player
 2 “gives a broader consumer segment the opportunity to experience the exceptional quality of Bluray
 3 format at a competitive price.”

4 110. As a result of the active concealment of the conspiracy by Defendants and their co-
 5 conspirators, any and all applicable statutes of limitations otherwise applicable to the allegations
 6 herein have been tolled.

7 **VIII. VIOLATIONS ALLEGED**

8 **First Claim for Relief** 9 **(Violation of Section 1 of the Sherman Act)**

10 111. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
 11 allegation set forth in the preceding paragraphs of this Complaint.

12 112. Beginning at a time currently unknown to Plaintiffs, but at least as early as October
 13 1, 2005, and continuing through the present, the exact dates being unknown to Plaintiffs,
 14 Defendants and their co-conspirators entered into a continuing agreement, understanding, and
 15 conspiracy in restraint of trade artificially to fix, raise, stabilize, and peg prices for Optical Disk
 16 Drives and Optical Disk Drive Products in the United States, in violation of Section 1 of the
 17 Sherman Act (15 U.S.C. § 1).

18 113. In formulating and carrying out the alleged agreement, understanding, and
 19 conspiracy, Defendants and their co-conspirators did those things that they combined and
 20 conspired to do, including but not limited to the acts, practices, and course of conduct set forth
 21 above, and the following, among others:

- 22 a. Fixing, raising, stabilizing, and pegging the price of Optical Disk Drives;
 23 and
- 24 b. Allocating among themselves and collusively reducing the production of
 25 Optical Disk Drives.

26 114. The combination and conspiracy alleged herein has had the following effects,
 27 among others:
 28

- a. Price competition in the sale of Optical Disk Drives has been restrained, suppressed, and/or eliminated in the United States;
- b. Prices for Optical Disk Drives sold by Defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels throughout the United States; and
- c. Those who purchased Optical Disk Drives directly or indirectly from Defendants and their co-conspirators have been deprived of the benefits of free and open competition.

115. Plaintiffs and other Nationwide Class members have been injured and will continue to be injured in their businesses and property by paying more for Optical Disk Drives purchased indirectly from Defendants and their co-conspirators than they would have paid and will pay in the absence of the combination and conspiracy, including paying more for Optical Disk Drive Products, as a result of higher prices paid for Optical Disk Drives by the direct purchasers of such Optical Disk Drives.

116. Plaintiffs and the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

Second Claim for Relief
(Unjust Enrichment and Disgorgement of Profits)

117. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

118. Defendants have been unjustly enriched through overpayments by Plaintiffs and class members and the resulting profits.

119. Under common law principles of unjust enrichment, Defendants should not be permitted to retain the benefits conferred via overpayments by Plaintiffs and class members.

120. Plaintiffs and class members in the State of New York seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiffs and class members may seek restitution.

Third Claim for Relief
(Violation of the New York Gen. Bus. Law §§349 *et seq.*)

121. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

122. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of the following state consumer protection and unfair competition statute:

123. Defendants have violated New York Gen. Bus. Law §§ 349 *et seq.* Specifically:

- a. Defendants engaged in commerce in New York;
- b. Defendants and their co-conspirators secretly agreed to raise prices by direct agreement on bids to customers located in New York and through artificial supply restraints on the entire Optical Disk Drive market;
- c. New York consumers were targets of conspiracy;
- d. The secret agreements were not know to New York consumers;
- e. Defendants made public statements about the price of Optical Disk Drives that the Defendants knew would have been seen by New York Consumers; such statements either omitted material information that rendered these statements that they made materially misleading or affirmatively misrepresented the real cause of the price increase for Optical Disk Drives; and Defendants alone possessed material information that was relevant to consumers, but failed to provide the information;
- f. Because of Defendants' unlawful trade practices in the State of New York, there was a broad impact on New York consumer class members who indirectly purchased Optical Disk Drives; and consumer class members have been injured because they paid more for Optical Disk Drives than the would have paid in the absence of Defendants' unlawful trade acts and practices;
- g. Because of Defendants unlawful trade practices in the State of New York, New York consumer class members who indirectly purchased Optical Disk Drives were misled to believe that they were paying a fair price for the Optical Disk Drive or that the price increase for Optical Disk Drives were for valid business reasons; and similarly situated consumers were

1 potentially affected by Defendants' conduct;

2 h. Defendants knew that their unlawful trade practices with respect to pricing
3 of Optical Disk Drives would have an impact on New York consumers and not just Defendants'
4 direct customers;

5 i. Defendants knew that their unlawful trade practices with respect to pricing
6 of Optical Disk Drives would have a broad impact, causing consumer class members who
7 indirectly purchased Optical Disk Drives to be injured by paying more for Optical Disk Drives than
8 they would have paid in the absence of Defendants' unlawful trade acts and practices; and

9 j. Defendants' consumer-oriented violations adversely affected the public
10 interest in the State of New York.

11 **Fourth Claim for Relief**
(Violation of the Donnelly Act, N.Y. Gen. Bus. L. §340 et seq.)

12 124. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
13 allegation set forth in the preceding paragraphs of this Complaint.

14 125. Beginning at a date unknown to Plaintiffs, but not later than October 1, 2005, and
15 continuing through the present, Defendants and their co-conspirators engaged in a contract,
16 agreement, arrangement and combination in unreasonable restraint of business, trade, and
17 commerce in violation of the Donnelly Act, N.Y. Gen. Bus. L. §§ 340 et seq.

18 126. The contract, combination, agreement and arrangement consisted of among other
19 things, an agreement by the Defendants to secretly fix, coordinate and raise their Optical Disk
20 Drive prices.

21 127. This unlawful cartel and the following effect, among others:

22 a. Price competition in the sale of Optical Disk Drives was suppressed and/or
23 eliminated;

24 b. Prices for Optical Disk Drives sold by defendants and their co-conspirators
25 were fixed, raised, maintained, and stabilized at artificially high, non-competitive levels;

26 c. Plaintiffs of Optical Disk Drives and products containing Optical Disk
27 Drives were deprived of the benefits of free and open competition, and paid artificially high, supra-
28 competitive prices for Optical Disk Drives and products containing Optical Disk Drives, or

1 purchased products that were otherwise of lower quality, than would have been absent the
 2 conspirators illegal acts, or were unable to purchase products that they would have otherwise have
 3 purchased absent the illegal conduct.

4 128. The conduct set forth above is a *per se* violation of the Donnelly Act.

5 129. As a result of the conspiracy, the Plaintiffs and Class members were injured in the
 6 business and property. They paid higher prices for Optical Disk Drives and products containing
 7 Optical Disk Drives than they otherwise would have paid in a competitive market.

8 **IX. PRAYER FOR RELIEF**

9 WHEREFORE, plaintiffs pray:

10 A. That the Court determine that the claims alleged herein under the Sherman Act, the
 11 New York Donnelly Act and Gen. Bus. L §349, may be maintained as class actions under Rules
 12 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, as informed by the respective state
 13 class action laws.

14 B. That the unlawful conduct, contract, conspiracy or combination alleged herein be
 15 adjudged and decreed to be:

- 16 1. A restraint of trade or commerce in violation of Section 1 of the Sherman
 17 Act, as alleged in the First Claim for Relief;
- 18 2. Acts of unjust enrichment as set forth in the Second Claim for Relief herein;
- 19 3. An unlawful combination, trust, agreement, understanding, and/or concert of
 20 action in violation of the antitrust laws of New York State as alleged in the
 21 Fourth Claim for Relief; and
- 22 4. Violations of the New York Unfair Competition Law identified in the Third
 23 Claim for Relief herein.

24 C. That Plaintiffs and the Classes alleged herein recover damages, to the maximum
 25 extent allowed under such laws as provided by the state antitrust and unfair competition laws of
 26 New York, and that a joint and several judgment in favor of plaintiffs and the Class be entered
 27 against Defendants in an amount to be trebled to the extent permitted by such laws;

28 D. That Plaintiffs and the Classes alleged herein obtain equitable relief including

1 restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which
2 may have been obtained by Defendants as a result of their illegal business practices, pursuant to the
3 New York Gen. Bus. Law §§ 349 *et seq.*

4 E. That Defendants, their affiliates, successors, transferees, assignees, and the officers,
5 directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on
6 their behalf or in concert with them, be permanently enjoined and restrained from in any manner
7 continuing, maintaining, or renewing the conduct, contract, conspiracy or combination alleged
8 herein, or from entering into any other conspiracy alleged herein, or from entering into any other
9 contract, conspiracy or combination having a similar purpose or effect, and from adopting or
10 following any practice, plan, program, or device having a similar purpose or effect;

11 F. That the Court enter an order of divestiture requiring defendants to rescind and/or
12 dissolve the cooperation agreements, joint ventures and/or cross-license agreements alleged herein
13 between and among them used to facilitate the conspiracy alleged herein;

14 G. That Plaintiffs and members of the Class be awarded restitution, including
15 disgorgement of profits obtained by Defendants as a result of their acts of unfair competition and
16 acts of unjust enrichment;

17 H. That Plaintiffs and members of the Class be awarded pre- and post-judgment
18 interest as provided by law, and that such interest be awarded at the highest legal rate from and
19 after the date of service of the initial complaint in this action;

20 I. That Plaintiffs and members of the Class recover their costs of suit, including a
21 reasonable attorney's fee, as provided by law; and

22 ///

23 ///

24 ///

25 ///

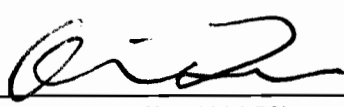
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J. That Plaintiffs and members of the Class have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

Dated: May 5, 2010



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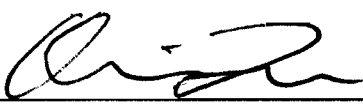
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JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs demand a trial by jury for all issues so triable.

Dated: May 5, 2010



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